IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

MACA.No. 759 of 2003()

OPMV.203/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

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APPELLANT/PETITIONER:

SIVAN, S/O. ACHUTHAN KUNJU AGED,
KALARICKAKUDYIL HOUSE, PALLARIMANGALAM,
KOTHAMANGALAM.

BY ADV. SMT.ANNIE PAUL
SRI.PHILIP J.VETTICKATTU

RESPONDENTS: RESPONDENTS:

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1. XAVIER S/O. JOSEPH, NJALIYATHU HOUSE,
MOOKKANNOOR ANGAMALI.

2. JACKSON, S/O. ITTOOP, ELANJICKAL
HOUSE, AMBALAPARAMBU KARA,
KOTHAMANGALAM VILLAGE.

3. THE BRANCH MANAGER, THE ORIENTAL
INSURANCE COMPANY LTD., CHURCH VIEW JUNCTION,
KOTHAMANGALAM.

BY ADV. SRI.MATHEWS JACOB

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.A.C.A.No.759 of 2003

Dated, this the 5th day of December, 2007

JUDGMENT

Petitioner in O.P.(MV) No.203/2000 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha is the appellant. Appeal is filed against an award passed by the Tribunal dismissing the Original Petition filed by the petitioner claiming compensation. The appellant filed an Original Petition claiming compensation alleging that on 11.1.2000 he sustained injuries in a motor vehicle accident. The appellant was riding a scooter bearing registration No.KL-7/F 7229. When the scooter reached at Kozhippilly another motor cycle bearing registration No.KL-7/E 2200 came from the opposite direction. A collision took place between the motor cycle and scooter and the appellant/petitioner sustained injuries. It was averred that the accident occurred due to the negligence of the second respondent who was the rider of the motor cycle. Owner and driver of the vehicle did not contest. Insurer alone contested. It was contended that the vehicle was covered with valid policy of insurance but no accident as alleged in the petition took place. It was also contended that there was no collision between the vehicles as alleged in the petition and that the accident occurred due to the negligence of the appellant himself, he fell down from the vehicle and sustained injuries. Tribunal found that there was a collision between the vehicles and the appellant failed to establish that the accident occurred due to the negligence of the second

respondent and accordingly dismissed the petition. Challenging the award passed by the Tribunal dismissing the Original Petition the petitioner himself has filed this appeal.

2. Accident occurred at 7.15 a.m. on 11.1.2000. Appellant was taken to Mar Baselious Medical Mission Hospital, Kothamangalam. Ext.A8 is the wound certificate in which the cause of injury was shown as fall from a motor bike. Learned counsel appearing for the appellant has argued that a criminal case was registered against the second respondent and the same ended in his conviction. That fact alone is not sufficient to hold that the accident occurred due to the negligence of the second respondent. Learned counsel appearing for the insurer has argued that no accident as alleged in the petition had taken place. It is argued that if, as a matter of fact, there was a collision of two vehicles that fact ought to have brought to the notice of the doctor and the doctor would have intimated that fact to the Police. It is argued that though the accident took place at 7.15 a.m. on 11.1.2000 FIR was registered at 6 p.m. on next day which necessarily indicates that FIR was brought into on account of instigation of the appellant. It is submitted that the evidence of PW2 cannot be relied on for any purpose. It is argued that according to PW2 in addition to appellant and the rider of the motor cycle the pillion rider of the scooter also sustained injuries. It is argued that the pillion rider of the scooter was taken to Mar Baselious Medical Mission Hospital, Kothamangalam. It is pointed out by the counsel for the respondents that if such

a thing happened there will be necessary medical records to prove that fact. It is also argued that he was not examined. It is submitted that no damage was noted to either on the vehicle in which the appellant was riding as well as the offending vehicle. So the Tribunal found that the appellant did not adduce any evidence to disprove that fact . If, as a matter of fact, the pillion rider of the scooter also sustained injuries and hospitalised, necessarily there must be medical records. I am of the view that one more opportunity can be afforded to the appellant to adduce further evidence. For that purpose the case has to go back.

In the result, appeal is allowed. The impugned award is set aside. Case is remanded. Tribunal is directed to take O.P.(MV) No.203/2000 back to file and dispose of the same in accordance with law after affording an opportunity to both sides to adduce evidence. I make it clear that I am not expressing any opinion regarding the relevancy of the documents already admitted and the Tribunal is free to consider those documents also and decide the matter. Parties are directed to appear before the Tribunal on 15.1.2006.

K. PADMANABHAN NAIR,
JUDGE.

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